

REMARKS

The comments of the Examiner as set forth in the Office Paper of 5 March, 2004 have been carefully studied and reviewed.

Claims 1-33 are currently pending in this application.

Claims 1-4, 19 and 20 have been rejected.

Claims 5-18, and 21-27 have been objected to.

Claims 2 and 3 have been cancelled without prejudice, for reasons described in the appropriate sections below.

Drawings

The drawings were objected to under 37 CER 1.83(a), because the drawings must show every feature of the invention specified in the claims.

The Examiner indicated the "slot" (claim 3) must be shown or the feature canceled from the claim, and that although the "slot" part number 24 is shown in Fig. 1, the figure does not show the wall having a slot.

A proposed new drawing (Fig. 7) is attached hereto. This exploded side view shows in greater detail the support 122 fitting into slot 24. The basis for this drawing correction can be found in the original specification on page 19, lines 12-14. No new matter has been added.

Claim Rejections - 35 USC § 112

Claims 1, 2, 19 and 20 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The Examiner alleges the claims contain subject matter

1 not described in the specification in such a way as to enable one
2 skilled in the art to which it pertains to make and/or use the
3 invention.

4
5 Specifically, the Examiner stated regarding Claims 1 and 19,
6 the phrase "a wall" is not disclosed in the specification. The
7 specification discloses "side members" but not a "a wall".

8
9 Claims 1, 19 and 28 have been amended to clarify that a side
10 member connects the other members of the trap body.

11
12 Regarding Claims 2 and 20, the Examiner indicated that the
13 phrase "a support bar" is not disclosed in the specification; the
14 specification, however, discloses "a support" but not a "a support
15 bar".

16
17 Claims 2 and 20 have been amended accordingly. After
18 reviewing all the Claims, Claims 3, 21 and 28 have been similarly
19 amended.

20
21 Claim 2 has been cancelled without prejudice solely to
22 facilitate the prosecution of this application.

23
24 **Claim Rejections - 35 USC § 102**

25
26 Claims 1 and 2 were rejected under 35 U.S.C. §102(b) as being
27 anticipated by Schuckman (U.S. Pat. No. 1,255,798).

28
29 Initially, p. 3 of the Office Action referred to these Claims
30 as being anticipated by Schuckman (U.S. Pat. No. 1,255,798), with
31 the sentence regarding Claim 1 referring to the Bitz reference
32 (U.S. Pat. No. 5,345,710). Applicant thanks the Examiner for
33 clarifying that Schuckman is the reference for Claims 1 and 2,
34 rather than Bitz, because the reference numbers cited in the Office
35 Action correspond to those of Schuckman, based on a telephone call

1 on 16 March 2004.

2
3 The Examiner alleges that as to Claim 1, Schuckman discloses
4 a trap body comprising a bottom, top, front and back members; the
5 front member comprising a top, a notch (read as any indentation or
6 cut in the front surface), an opening; the top member having at
7 least one aperture (read as any through hole in the top member);
8 the trap door slidably retained between the front member and the
9 body by a spacer (Fig. 3); a bait holder 20 being pivotably
10 attached to the top member and extending within the body; and a
11 trip mechanism 9.

12
13 To be a proper reference under 35 U.S.C. §102(b), the
14 reference must teach every aspect of the claimed invention either
15 explicitly or impliedly, and any feature not directly taught must
16 be inherently present. MPEP 706.02.

17
18 Applicant respectfully traverses the rejection of Claim 1
19 under 35 U.S.C. §102(b) because Claim 1 as amended, is not
20 disclosed by Schuckman.

21
22 Specifically, the location of the apertures in Claim 1 differs
23 from those in the reference, in which an aperture is present
24 towards the middle of the trap, where basket 22 enters the trap of
25 the reference. Therefore, because the reference does not disclose
26 all of the features of the claimed invention, it is an improper
27 reference under 35 U.S.C. §102(b), and Applicant respectfully
28 requests that the rejection of Claim 1 be withdrawn.

29
30 Regarding claim 2, the Examiner alleges the reference
31 discloses a support bar (read as the brace with two rivets in Fig.
32 5).

33
34 Claim 2 has been cancelled without prejudice solely to

1 facilitate the prosecution of the present application.

2
3 **Claim Rejections -35 USC § 103**

4
5 Claims 3 and 4 were rejected under 35 U.S.C. §103(a) as being
6 unpatentable over Schuckman (U.S. Pat. No. 1,255,798).

7
8 As to claim 3, not disclosed is a slot for receiving the
9 support bar. The Examiner alleges that in the absence of any stated
10 problems solved by or any stated advantage obtained by having a
11 slot to receive the support bar as claimed in the instant
12 invention, it would have been obvious to one of ordinary skill in
13 the art at the time the invention was made to comprise the device
14 of Schuckman with a slot to receive the support bar. The Examiner
15 further alleges such modification is merely an alternate equivalent
16 support bar supporting means performing the same intended function.

17
18 As to claim 4, the Examiner alleges Schuckman discloses a trap
19 door including an elongated slot.

20
21 Applicant respectfully traverses these rejections of Claims 3
22 and 4. To reject a claimed invention based upon its obviousness
23 over the prior art, the examiner must support such a rejection by
24 establishing the invention's prima facie obviousness. The examiner
25 must show where in the art cited there is a description of the
26 claimed invention sufficient to have taught or suggested the
27 invention to ordinarily skilled artisans of the time (see, e.g.,
28 ACS Hospital Systems, Inc., v. Montefiore Hospital, 221 USPQ 929,
29 933 (F. Cir. 1984); see also, In re Fine, 5 USPQ2d 1596 (F. Cir.
30 1988)).

31
32 Evaluation of whether the cited documents provide the
33 necessary description requires consideration of "(1) whether the
34 prior art would have suggested to those of ordinary skill in the
35 art they should make the claimed [invention] ... and (2) whether

1 the prior art would have also revealed that in so making ... those
2 of ordinary skill would have a reasonable expectation of success"
3 (In re Vaeck, 20 USPQ2d 1438, 1442 (F.Cir. 1991)). "Both the
4 suggestion and the reasonable expectation of success must be found
5 in the prior art, not in the applicant's disclosure" (In re Vaeck,
6 supra). That is, "one cannot use hindsight reconstruction to pick
7 and choose amongst isolated disclosures in the prior art to
8 deprecate the claimed invention" (In re Fine, supra at 1600).
9

10 Applicant respectfully traverses the rejection of Claim 3 for
11 failing to disclose a slot. Such a slot 24 was disclosed in the
12 specification as originally filed (page 19, lines 12-14) and in
13 Fig. 7, submitted with this amendment, which is an exploded side
14 view of an embodiment of the present invention that more clearly
15 illustrates the slot 22 and how support bar 122 fits therein.
16

17 Claim 3 has been cancelled without prejudice solely to
18 facilitate the prosecution of this application; Claim 4 has been
19 amended so as not to depend from a cancelled Claim.
20

21 Applicant respectfully traverses the rejection of Claim 4
22 because Schuckman does not illustrate a trap door that includes an
23 elongated slot. Figure 1 illustrates a trap door (sliding gate 7,
24 p. 1, lines 95-102) formed of woven wire. Trap door (sliding gate)
25 7 does not have an elongated slot.
26

27 Other elements in Schuckman that may be construed as trap
28 doors similarly fail to include an elongated slot. Jaws 2 (Fig. 1)
29 or drop wire 35 (Figs. 2 and 4, p. 2, lines 74-80) also do not
30 include any elongated slot; the jaws 2 comprise a hinge bar 2a,
31 prongs 2b and a spacing bar 2c (p. 1, lines 54-56), and drop wire
32 35 is similarly constructed.
33

34 In Fig. 4, the arms 18 and 19 which secure bait basket 20 to

1 the trigger (p. 2, lines 4-10) could be mistakenly construed as an
2 elongated slot, but the text (p. 2, lines 4-10), and the legend to
3 Fig. 4 (vertical transverse section of Fig. 3, Fig. 3 being a
4 vertical longitudinal section cut centrally through the main cage,
5 p. 1, lines 27-30) clarifies such an erroneous construction.

6
7 Thus, because Schuckman does not disclose a trap door
8 including an elongated slot, it is an improper reference, and
9 cannot be the basis for a prima facie case of obviousness.

10
11 Claim 4 has been amended so as not to dependent upon a
12 cancelled Claim.

13
14 Applicant respectfully submits that the Examiner has failed to
15 make a prima facie case of obviousness, and that Claim 4 describes
16 patentable subject matter. Accordingly, Applicant respectfully
17 requests that the rejection of Claim 4 based on 35 U.S.C. §103(a)
18 be withdrawn.

19
20 **Allowable Subject Matter**

21
22 Claims 5-18 were objected to as being dependent upon a
23 rejected base claim, but would be allowable if rewritten in
24 independent form including all of the limitations of the base claim
25 and any intervening claims.

26
27 Applicant respectfully defers rewriting Claims 5-18 as
28 suggested by the Examiner, because Applicant submits that amended
29 Claim 1 defines patentable subject matter for the reasons described
30 above.

31
32 The Examiner indicated that Claims 1 and 19 would be allowable
33 if rewritten or amended to overcome the rejection(s) under 35
34 U.S.C. § 112, first paragraph, set forth in the Office action.

1 As described in previous sections of this Amendment, Claims 1
2 and 19 have been amended to overcome the rejections under 35
3 U.S.C. § 112, first paragraph.

4
5 Claims 2 and 20 would be allowable if rewritten to overcome
6 the rejection(s) under 35 U.S.C. § 112, first paragraph, set forth
7 in the Office action and to include all of the limitations of the
8 base claim and any intervening claims.

9
10 As described in previous sections of this Amendment, Claim 20
11 has been amended to overcome the rejection(s) under 35 U.S.C. §
12 112, first paragraph.

13
14 Claim 28 has been amended in a manner similar to other
15 independent claims, Claims 1 and 19. Applicant respectfully
16 submits that Claims 29-33 define patentable subject matter, and
17 should be allowable.

18
19 **Conclusion**

20
21 Thus, the present pending Claims distinguish over the prior
22 art and define patentable subject matter.

23
24 Applicant thanks the Examiner for his thoughtful review of
25 this application, and respectfully requests the Examiner review the
26 pending Claims and to find that they define patentable subject
27 matter. Thus, it is respectfully requested that the present
28 pending Claims be allowed.

29
30 In the event that this Amendment does not place the
31 application in condition for allowance, the Examiner is
32 respectfully requested to telephone the undersigned in order that
33 an attempt can be made to place the application in condition for
34 allowance as expeditiously as possible.

Respectfully submitted,



BENJAMIN APPELBAUM

Reg. No. 38,068

Attorney for Applicant

DATED: July 6, 2004

Benjamin Appelbaum, Ph.D.

Attorney-At-Law

27 Bennington Drive

Flanders NJ 07836

Tel: (973)-927-5573

Fax: (973)-584-2621